

**TOWN OF BEDFORD**  
**March 25, 2019**  
**PLANNING BOARD**  
**MINUTES**

A meeting of the Bedford Planning Board was held on Monday, March 25, 2019 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Harold Newberry (Acting Chairman), Karen McGinley (Secretary), Chris Bandazian (Town Council), Jeff Foote, (Public Works Director), Mac McMahon, Charlie Fairman (Alternate), Matt Sullivan (Alternate), and Becky Hebert (Planning Director)

**I. Call to Order and Roll Call:**

Acting Chairman Newberry called the meeting to order at 7:00 p.m. Chairman Jon Levenstein, regular member Randy Hawkins and Town Manager Rick Sawyer were absent. Mr. Fairman and Mr. Sullivan were appointed to vote. Assistant Planning Director Mark Connors was not present.

**II. Old Business – Continued Hearings: None**

**III. New Business:**

1. **The Preserve at West Bedford LLC c/o Dick Anagnost (Owner)** – Request to amend a previously approved subdivision plan for ‘The Preserve at West Bedford’ relating to a wetland crossing and drainage along Indian Rock Road, Zoned R&A.
2. **West Bedford County Farm LLC c/o Dick Anagnost (Owner)** – Request to amend a previously approved subdivision plan for ‘Governor’s View’ relating to relocation of drainage facilities on Indian Rock Road, Zoned R&A.

**IV. Concept Proposals and Other Business: None**

Ms. Hebert stated abutters have been notified and it is staff’s opinion that none of the applications pose a regional impact. Staff would recommend that the Board accept the agenda and determine the applications to be complete.

**MOTION by Councilor Bandazian to approve the agenda as presented. Ms. McGinley duly seconded the motion. Vote taken – all in favor. Motion carried.**

**1. The Preserve at West Bedford LLC c/o Dick Anagnost (Owner) – Request to amend a previously approved subdivision plan for ‘The Preserve at West Bedford’ relating to a wetland crossing and drainage along Indian Rock Road, Zoned R&A.**

Bob Baskerville, Bedford Design Consultants, stated this project goes back a long way. Some of you will remember the names of Jeff Palmer and Ted Atwood. We originally started looking at the land that is currently The Preserve probably 20 years ago. This property is called The Preserve at West Bedford. The two properties above it are called Governor’s View and Governor’s Ridge. In 2006 we originally started working on this project for a partnership that Dick Anagnost is involved with. We did the design, we did the wetland permitting and the alteration of terrain, and the wetland permit was approved in 2007. I think Town approval was 2009. What happened, and some of you may recall this, the property just north of this was owned by the County and they went out to bid and it became very contentious, there were issues and it had to get rebid and then it got rebid a second time and there was an owner and then Ken Atwood and Jeff Palmer stepped forward and they had the right of first refusal from the original family who gave it to the County during World War II to feed the troops, so that won them the right of first refusal and took it for the high offer. When we first did the culvert that is now on Sprague Mill, there is an open-bottom box culvert for one reason, Boiling Kettle; so many road names and that is why Katie is with me. At that time there was a technical wetland limit of so many square feet in between categories, minor and major, and Jim Gove of Gove Environmental said if we stay under that limit, if we expand the wetland and didn’t fill it. That was the reason for making the culvert on Boiling Kettle an open-bottom and not a closed-bottom. Once we added on Governor’s View and Governor’s Ridge; the State looks at those as adjoining properties, we had to combine them into one big permit. Totally blow through the limits for the major, all rationale for doing it, this open-bottom box culvert disappeared, but we were way down the road then, 2009 was coming, and during that period of 2007, 2008, 2009, 2010 the housing market tanked, absolutely tanked, so we should have gone back then and redone these changes but the new construction would be way off. I think even they didn’t think it would be this far off. We still don’t plan any construction on Boiling Kettle. There was a culvert on Pulpit Road, right above where the hand is on the screen, that has a much larger flow; it was originally designed as an open-bottom box culvert, we went back to the Town Wetland Board to change it to a closed-bottom box culvert, and that got approved and installed. This one did not get addressed at the time, and as you can see, it is too far off. We also had a steel sleeve here that I will talk about that is also a concern, but I will wait until I get to the close-up plans for that. I just wanted to go over the history first.

Mr. Baskerville stated in 2009 it got approved. One, two, three years after that they built the road, they reconstructed Pulpit Road all the way from New Boston Road all the way out to King Road and they also built Sprague Mill Road, that opened up 24 lots, or something like that, and those are just about sold now. They went back last summer, we did a preconstruction meeting, the build-out of Indian Rock Road, which goes into The Preserve and then continues up to Governor's View.

Mr. Baskerville stated this issue we had with the culvert and the sleeve just sat for a long time. We originally got the wetland permit in 2007. The original permit was for five years and you have one 5-year extension. We had all ten years, those expired in 2017, so when it came time to

go back and actually reapply and do new plans, that is when I got authorization to make the changes. We resubmitted the plans to the Conservation Commission, who approved them, we submitted them the Wetland Board, who approved them with no issues.

Mr. Baskerville stated for a little history regarding the whole environmental part of this: When we first got State approval for the wetland permit, at that time you get the State permit and Army Corps had 30 days to come back and say we would like to take a closer look. They did say that on this, so back in probably 2007, 2008 I was on a site walk on the site where there was a big group of people, we had the New Hampshire Wetland Board, we had New Hampshire Fish & Game, we had the Army Corps representative from the federal level, and we had a representative who is Mark Kern, which I think is Fish & Game but could be EPA, but he is the vernal pool expert. He found a vernal pool in this area shown on the screen. It was in a roadside ditch off the original Pulpit Road and was notably impacted so he had us build some new vernal pools way out in the open space and all of that got done. The critical issues we looked at were the vernal pool at the road and then down in the area by Pulpit Brook itself. These areas were never identified as any critical habitat, and when we went to the Conservation Commission, there was no issue, the Wetland Board had no issue, we did all of the heritage studies, national inventory for the endangered plants and species, we did all of that as part of the submission. And as part of that too, the alteration of terrain permit also expired. So one thing you will see when you go here, there are sheets just of our typical details; our original permit was issued under the old roads, which took effect in 2007. When we reapplied, we had to do it for the new roads. So there are some pages in the back, and I will skip ahead to that, all of their typical specs. They did a completely new book; all the specs on seeding, mulching, construction, site maintenance, all of that stuff got revised and edited, so I don't think there are any substantial changes here but a lot of their standard boilerplate details changed on silt fences and everything. That is why you have those two pages. Since we were coming in for this, we just thought we would include this too because it is a change they did.

Mr. Baskerville stated going to the next drawing, this sleeve is on Indian Rock Road and it is down in this position here. At the time we had a comment that we had a drain line that went under the road. We had a piece of concrete drainage pipe that went under the culvert. So originally there was a drain line that went underneath it, the original design engineer, for whatever reason, there are two of these; there is one under each culvert. On this one, if you just ran it underneath it and said put it in a steel sleeve. At that time, I thought he thought it would just be the easiest and cheapest way to do it. On the other culvert on Boiling Kettle, instead of running it underneath it with a steel sleeve, he just moved it slightly outside and ran it outside. So for two different culverts he did it two different ways. When this went to construction, the contractor came back and he said he had three issues. The steel sleeve we called out was like a 30-foot-long steel sleeve, big enough to hold the bell of a large concrete pipe, so it was very large, very long, he said there was a five or six month wait time for it, very expensive, and the technical issue we had you've only got segments of concrete pipe. Somehow you have to connect them at the top and then push them through and he didn't know how they were going to ensure the integrity of the bell and sleeves that were going through it, so the contractor came back with a very high degree of cost and uncertainty of could he guarantee that it wouldn't leak, he came back with arguments saying that there is an extreme difficulty with this; we did not force it in. So we just did on this one what we did on the other one originally. We just moved it

outside a little bit, still in the construction easement. By the way, this is technically we are calling this an amended plan, but none of the lot lines changed, none of the road locations changed, none of the road grades changed, so this is strictly engineering issues for drainage. So this one we just put in a new catch basin, we moved outside of the culvert so that it is no longer under the culvert, so there is no need for the sleeve, it is the same as the sleeve on Boiling Kettle, which does not have a sleeve.

Mr. Baskerville stated coming down to the one on Boiling Kettle; this one was the one that we originally had an open-bottom box culvert for one reason. We thought we could get by without filling that space, 12 feet wide by 70 feet long, that seemed to be the magic number to keep us under the statutory limit for the original Wetland Board approval. When we got a bid from the contractor to build this last summer, what we do with all of these, we get the permitting from the State, we show what size it has to be, we show the invert, but we don't design the actual bridge, I have my structural stamp but I don't use it. You send it out to the structural engineer so it says to redesign later, etc. the same with all of the culverts. The bigger structures are designed at a later time. When the contractor brought it out to the reinforced concrete manufacturers, they came back with a lot of issues. The first was, my recollection from 20 years ago, that per the State it doesn't become a bridge until you had a 20-foot span. It was brought to our attention by HTA, your design reviewers, now there is a new RSA that anything over 10 feet it is a bridge and we had a 12-foot. So technically now what we thought was a culvert went to a bridge; we never intended to have this be a bridge.

Mr. Baskerville continued secondly, and this is per a sheet with the cross-sections. From the upper part of the culvert down to the bottom, the natural grade goes down about 8 feet. When I put in a reinforced concrete box, concrete on the top, sides, bottom, I can put in a 12-inch layer of gravel, I lay it flat on the ground, it sits on the ground, and that supports fully the structure. If I have an open-bottom culvert, I have two sides and a top and then I need foundations on the two sides. They said that the drop of 8 feet across it was just too much. You can't go that deep on the high end or fill it on the low end, so they wanted to do step foundations where we go down and do them at different levels. This just brings it to a whole different world and start worrying about differential settlements. Once you compact it, will it settle differently on one side than the other. It brought in a whole host of problems we never foresaw and there is no reason for this. It was part of our process to get approval. With the wetland permit we went in and changed the box, just like the one we did on the one on Pulpit Road, and it went through very easily.

Mr. Baskerville stated so the four reasons we are here is we would like to change the open-bottom from an open-bottom to a closed-bottom culvert, we would like to move the sleeve and we would like to change the detail sheets just updated to the current drainage and stormwater standards per the alteration of terrain permit.

**2. West Bedford County Farm LLC c/o Dick Anagnost (Owner) – Request to amend a previously approved subdivision plan for 'Governor's View' relating to relocation of drainage facilities on Indian Rock Road, Zoned R&A.**

Mr. Baskerville stated this is kind of a simple issue on this one but you can see it on the third lot on the right, but since I was going in for one permit, I thought we would do this at the same time.

Mr. Baskerville stated all we did here is we had a case where we have a catch basin called out going across the road at a normal 90-degree angle and we saw that the driveway goes in just upslope of that, so you had to put a culvert through the driveway, putting it into the catch basin and it just didn't seem to make sense. We just moved the catch basin up in front of the driveway instead of behind it. It just seemed like the practical change to make. I think that is the extent of change at Governor's View.

Mr. Baskerville stated I would be glad to answer any questions that you have.

Acting Chairman Newberry stated looking at the staff report, I think there were some concerns from the Public Works Director, so maybe Mr. Foote can comment on your concerns.

Mr. Foote stated I will start with what is on the screen before you. We had a staff meeting last Tuesday and we had a set of plans that had an error, I believe, or an omission in the original plan from 2009. It also had an error, according to the Town engineer, about stationing. We were all confused; I was confused, she was confused, Ms. Hebert was confused, Mark from VHB was confused, and we really didn't know what was going on. So Ms. Hebert followed up and came back with this plan later in the week. What is being proposed now, late today this was dropped on my desk, this is the inspection report, this has already been constructed and it is in place, so we went forward with this administratively like we have done 20 other times for this project. This is in place today, this has already been built, so we supported it, HTA signed off on it, and it was built last October. We have no issues with this.

Mr. Baskerville stated I apologize for submitting it even though it had been approved. Ms. McGinley asked Mr. Foote, that is the one that is the second? Mr. Foote replied that is the one before Indian Rock. Acting Chairman Newberry stated that is the second agenda item, that is correct.

Ms. Hebert asked would you like to withdraw that application? Mr. Baskerville asked everybody is all set without this? Is that right? Ms. Hebert stated this is the type of change that would typically be approved administratively, so I think there was some confusion. Mr. Baskerville stated we will withdraw the application then. Ms. Hebert responded okay. Mr. Baskerville stated if it is just a matter of confusion, I will withdraw the application. Ms. Hebert responded okay, thank you. Mr. Foote stated this has been very typical, at least of the administrative changes that the department has made over the course of the last ten years. I can go on and list a hundred of them for you. I can tell you that the changes to the plans I was the one that came before the Planning Board, I forget how many years ago, and that was now where they originally had Pulpit Road T-ing into King Road, it was me who came before the Planning Board to provide a better intersection plan for both the developer and the Town. What I did is proposing, and you all approved at some point, was moving the Pulpit Road intersection further from the wetland as it approached King Road. We did that, it saved the developer tens of thousands of dollars, we eliminated guardrail. Again, we moved it further away so the stormwater had more time to cleanse itself before it got to the wetland. It removed, I believe, if I remember correctly,

we removed closed drainage saving the developer more money. That is just one change that has gone on that we have dealt with administratively, and we did bring that back because of the right-of-way change. I can go on and on but I don't think you want to listen to the last ten years any more than you have. It would be nice if we could go back to the sleeve and I can explain why we have concerns about the proposal that is before you tonight.

The discussion returned to **Application #1**.

Mr. Foote stated the culvert and sleeve as shown on the existing plan approved by the Planning Board is a superior product than the revision and the amendment that you have before you today. What is being shown today will increase future costs to Bedford taxpayers during future maintenance activities and replacement of infrastructure. The existing approved subdivision plan shows a 24-inch diameter RC pipe with a solid sleeve located under a 12-foot-wide box culvert. The proposed subdivision amendment in your packet identifies pressure from the box culvert above the RC pipe being a reason to relocate it into the ditch and it being in the sleeve that protects the pipe. Originally, in the plans and notes from Jim Stanford back ten years ago when this project originally came in and this is the original with his handwriting on it, and when they first came in with this proposal, they didn't show a sleeve underneath the box culvert. So, Jim, as his notes say here, says "How do I maintain a drain line under a box culvert?" It was valid. The developer or a representative came back with a solid sleeve alternative, it was acceptable to us then, and that was what was approved by this Board. Now they are here ten years later and there has been no discussion about how this is better for the environment or what our future maintenance costs are going to be. I guess I am here telling you tonight that the sleeve in the future will reduce the Town's maintenance costs simply because the sleeve is on the edge of the road, it is going to protect the pipe for not only the loading as was outlined in the staff report, but it is also going to make it easier for the Town to maintain it if we ever need to replace the pipe. As we know, we have spent a lot of money over the last 15 years on infrastructure improvements.

Mr. Foote stated if we look at this proposal and why we are opposed to it, you can see in the red they are moving the drain line off the edge of the road, they are introducing a new drain line that is 5 feet from the proposed headwall of the box culvert, so it is 5 feet offset, it is 10 feet below the invert of the box culvert that goes underneath the road, and it is in and adjacent to a wetland. So if we ever need to maintain this thing, we are going to have to get a permit from NHDES. I will kind of paraphrase what Jim said in 2009 and ask you all the question, how does DPW effectively and efficiently maintain a 24-inch diameter drain pipe in a newly proposed manhole located 5 feet horizontally and 10 feet vertically below the headwall, all while in or adjacent to a wetland? To me, I am looking at this that it is going to be a brand new road, it should be something we should be proud of for a long, long time, and to me I look at this and this is essentially a retrofit, which is something we do when we are trying to get out of a situation that is bad to get it behind us. I would request that the Town, this body, the Planning Board, adhere to the approved plan from ten years ago. Ms. Hebert asked does everyone understand what the sleeve does, how it functions? The pipe gets threaded through the sleeve; DPW won't have to go in and dig up the earth above the pipe. I just wanted to make sure folks understood what the sleeve was and how it worked. Acting Chairman Newberry stated you are probably going to

have to dig it up but you are going to have to dig it up from 10 feet down, if I understood you correctly. Mr. Foote responded I think you did. Ms. Hebert responded yes.

Mr. Foote stated I would like to move onto Boiling Kettle. It is my understanding that originally they did propose, I think it was a 20-foot span, open-bottom culvert. I think it was a 20-foot span. So this proposal essentially that we have before you tonight I think is a 3 x 12 box culvert, and essentially whether this original plan was because they had to avoid something or it was for whatever reason, the bottom line is what was proposed is probably the best crossing of any size in the whole development, and as a matter of fact, we have no objection for them to shrink it. I think it went from a 20- to a 12-foot span and we have no objection with that. What we would like to see is that the open-bottom be maintained, and I say that because of previous experience in things that we have encountered here in town. In 2010, if you recall, the Wallace Road at Riddle Brook culvert failed, it was at the invert. The whole superstructure was good, and it failed. With Cider Mill that we just finished last fall, if you go onto our project's website, you will see Cider Mill. Well, Cider Mill is the same thing. Where did that crossing fail? The concrete failed at the invert. Over the last number of years, we, ourselves, have been installing, inspecting open-bottom culverts. I can tell you we did this on Eastman Avenue, we did this on Jenkins Road, as I mentioned, we are just finishing on Cider Mill, and the next crossing we have will be an open-bottom as well on Beal's Road. So we recognize the additional long-term maintenance costs with replacing structures that have inverts. As a matter of fact, DES prefers that you have a crossing that is a natural bottom, and for whatever reason, and I am not disagreeing with anything relative to why people did things, but what you approved back ten years ago is a better product than what is being proposed now. As I said, the Town has gone through over the last ten years, and I will just name a few things that we have done to assist the developer and lessen costs, if you would like to hear those. Acting Chairman Newberry asked if I understood you correctly, the closed-box, the experience that the Town has had is that the bottom fails? Mr. Foote responded they either fail or when you need to perform maintenance on them, an open-bottom, natural bottom has no maintenance essentially, right, so anytime we need to go in and apply elastomeric sealant around the bottom of it, there is not an issue because there is no water flowing through it because the footing is exposed, versus a box culvert that may or may not be, if we need to maintain with silane or siloxide, same type of thing. So anytime you have a box or a pipe structure and you want to maintain it, you have to build or provide a bypass. With an open-bottom structure, you don't have to. Does that make sense? So, this is why we think the existing is a better product than what is being proposed. As I said before, we don't have a problem with them reducing it from 20, I think it was to 12, maybe I am wrong on the 20, but I think it was larger than what is being proposed today. So we have no problem with reducing it being consistent with Indian Rock Road. We just would request that we adhere to the open-bottom, which was approved I guess ten or so years ago. Councilor Bandazian asked is that reducing from 20 to 12 something that would normally be handled administratively? Mr. Foote replied no. Councilor Bandazian asked so that would require approval? Mr. Foote replied that is the other part of this. We had a difference of opinion last summer and this whole process occurred without Public Works knowledge, so we didn't find out about this until I think October when all of the approvals and processes had been briefed.

Mr. Fairman asked Mr. Foote, would you address the change in elevation? Any issues that might cause in the open box? The applicant brought up the change in elevation creating some problems

in the open box of the way he had to build it. Mr. Baskerville responded I believe he is referring to having to do a step foundation. Mr. Foote stated as I said, we have had to deal with the same type of issues. It is not an issue; it is just commonality. We are in New England and we have terrain so it is a common occurrence. It is not any typical situation.

Acting Chairman Newberry asked are there any further questions from the Board for either Mr. Foote or the applicant? Mr. Baskerville asked will I get a chance to respond to Mr. Foote's comments? Acting Chairman Newberry replied certainly.

Mr. Baskerville stated when this came up due to the insulation concerns that the contractor had, cost plus the long boarding timeframe, just went down to this other design, which you have just looked at, there is a catch basin here, the pipeline goes down through the wetland outside of the catch basin exactly like we are proposing to do on the other one. When you take a look at that same cross-section, the pipe was shown next to it, it is 3.5 feet off from that. That is approved as acceptable in the first one. I disagree with Mr. Foote that it is a superior product to put it under that road rather than next to it. There is no sleeve required, there is no pressure above it, it is not easy to replace either way. I don't think it is a superior product. This gets to an issue I have and that the owner has. These plans will not have the Town of Bedford logo on it, nor will they have Mr. Foote's stamp on it. I am the design engineer, I will be stamping this, I have responsibility for the designs. I work for Mr. Anagnost who wants the best product available that makes sense. We feel we have a right to submit a design that is, in our opinion, superior to the original design, that it needs to be considered. We originally submitted this as a concept to the DPW department and didn't get an answer. I went ahead and drew it up and stamped it and sent it in and we got a reply. It was six words: 'build it per the approved plan.' Everything you heard tonight was never expressed to us; that is all we heard. I went in and met with Mr. Foote separately after he hired Ms. Walker, and I believe she was going to look at it. We never heard a response, and then at some point I heard that we had to bring it back; I heard that it would be able to be done on an administrative level. I understood we had to bring it back to the Planning Board so here we are. We feel this is important; we don't think the Town gets to dictate a design to us and say you can't change it. If the professional engineer was going to stamp this, have professional liability insurance on it, the owner is going to build, he is going to have to put a bond on it, it is going to have to perform properly, we believe he has some input to put in a design, and for us to get technical review comments. We never got any. That is why we are here for the sleeve. Ms. Hebert stated the process when there is a change to an approved plan, that when there is disagreement amongst staff, the process is to come back to the Board for a final decision on a requested change. I also think it is important to mention it was explained to me that this was all about the cost of the sleeve and the availability of the sleeve. Mr. Baskerville stated I think it is cost and technical aspects. Ms. Hebert responded okay, because the plan was designed and the plans were signed and the road was designed with a certain understanding that you would be building it per the plan. Mr. Baskerville stated and this has been a long process. This was probably designed back in 2006 and here we are in 2019, 13 years later, we never thought that. The design engineer who designed this had been the DPW director in Newmarket and he now moved out west. I haven't seen him in years. I overlooked the plans, when it comes to this culvert, I did see that before the plans even got approved, but it should be modified. But at that point we already had the wetland approval, we already had the alteration of terrain approval and the market was tanking, if you remember 2009. He didn't want to go back and then get another

wetland permit at the time for it. We knew at the time that we didn't want this in here, but it is such a long approval process, he just said I am not going to build this for years, call it even 13 years, and this is not part of the current construction, but since I had to get a wetland permit for The Preserve in its entirety, everything would just lapse. I want to say there were 29 different wetland impacts originally and now we are down to three or four. So 26 of 29 wetland permits got done, parts of the road never got built and the wetland permits never got done. So I had to address this at the same time. Again, we feel this is a better design, it matches what we did crossing Pulpit Road for a much bigger design. The only thing we did do, per the request of Oriel Tanner recently, he asked us for more flow calculations.

Mr. Baskerville continued to give you an idea of the flow through these, just to show that we are not overloading these, for the culvert that is downstream of it, this is the same, going back to the original plan, the water that goes through this comes in through the View, comes down through this slot, crosses here, goes down here and then goes here, so both of these culverts have the same stream and the same channel. HGAS just to analyze this one for larger flows, for scour purposes, 100-year floods and 500-year floods, and we came up with that the average flow for this culvert, and we have not submitted this to Mr. Foote yet, in a 100-year flow it is 5.5 inches. If it is 36 inches deep, it is only 5.5 inches deep, the water going through it. In a 500-year storm, it is 0.74 feet, which is less than 9 inches out of 36 inches, so it less than 25 percent of the height of the culvert. So even in a 500-year storm these culverts have excessive capacity and they will never overtop. 5.5 inches in a 100-year flood is not a large flow. So, we look at the cost, we look at the technical aspects and as I said at the time, we did not design this bridge nor the sleeve. It was put in as a design to be done later. Once you get down to a contractor that has their own manufacturers, we let them do the designs. They came back later and told us it is impractical for reasons we didn't know at the time, plus the cost was excessive. All of the costs have gone up since then. So for those reasons, the owner has instructed me to seek this design change. I, as the professional engineer who stamped these plans, have the responsibility and feel these are superior plans. Mr. Fairman stated unfortunately you say responsibility, but it comes upon our costs to replace them as we are doing in so many culverts that engineers and other developers have put in that have failed, and we are spending a lot of money replacing culverts now. Frankly, I am not in tune to change anything that is going to make it increase our costs in the future, as Mr. Foote has said. Mr. Baskerville responded I hear what you are saying, this is the first I have heard tonight that the Town prefers open-bottom for management reasons. We have always heard the opposite, and you are concerned about scour in the channel, how low will it flow, will it flow below it. It can't scour out the bottom of a concrete channel. We feel very strongly about this.

Acting Chairman Newberry asked would further technical discussion between you and the Public Works Department have the possibility of coming up with a solution that is more acceptable to both the Town and to the development? Mr. Baskerville replied we made progress tonight. This is the first I heard going from 20 feet down to 12 feet was acceptable, so I had preferred an answer tonight but we made a large degree of progress tonight. I would not be against that. Better that than to rush through something that I think we will both regret. Acting Chairman Newberry asked so you would be okay with tabling this for further discussion between you and Public Works? Mr. Baskerville replied yes. Acting Chairman Newberry asked does it sound like something the Board should consider, Mr. Foote, from your perspective? Mr. Foote replied

I am not sure what other discussions needs to occur. Acting Chairman Newberry stated it kind of sounded to me like there may not have been full opportunity for you and your department to be fully aware of where they were heading and why, which is what led me to ask the question in the first place. Mr. Foote responded I am not going to comment. I think the department has been notoriously open for anyone, just like we have made ourselves available for so many changes on this subdivision over the last ten years, it boggles my mind that we are having this discussion that the Town has not been available or that Public Works hasn't been available or I haven't been available. I am beside myself and I apologize. I think we have demonstrated why it needs to be where it needs to be as far as the sleeve underneath and out of the wetland. I think that, as I said, we are not opposed to a reduction, no one ever proposed a reduction of the box culvert to 12 feet to us. I don't recall that anywhere. I think the first time I saw it, I believe, was some time after October 15<sup>th</sup>. I apologize if I missed an email somewhere. I know Jim spent a lot of time on this back in the day and he would come to me, and I spent some amount of time and I thought we had a good product here, I thought we had something that we could all be proud of for a long time that would work and would be efficient. Now I don't know what the term is, if it is revisionism or what, but we have a good plan here, and I don't know what further discussion should happen. I stated what I thought should happen on the sleeve and I stated what I thought was appropriate on Boiling Kettle. Boiling Kettle that is the sole access for 12 or 14 lots, so that is the only access in and out of those lots for the next, pick how many, centuries. If we look at this, when we need to replace this, we want to be in a position where we can do this very quickly. In a 3-sided structure, once the footing is in, is a lot quicker to replace than a box culvert that has failed because the super structure or the footings to the super structure are there. As an example of this, when there is a war, they don't blow up the bridge, they blow up the abutments because the abutments take more time to produce. You can build a bridge relatively quickly if you have the substructure in place. So once a bridge or a 3-sided structure is in place, it is much easier to maintain in the future and that is why we support that effort to maintain what was previously approved.

Mr. McMahon stated it may be possible to look at this in terms of the short-term goals/long-term goals. For the contractor is the short-term goal is to save money; for the Town the long-term goal is to be able to save the Town money. I understand your proposal; to delay this I am not too sure how much good that would do, and I fully support and believe in Mr. Foote's comments and his concerns. Councilor Bandazian stated I think what immediately proceeded the Acting Chairman's suggestion was information about flow of storms. I don't know if that is new or not new. Mr. Foote stated I have no concern with that. I don't think the discussion has been about flow. I haven't mentioned flow anywhere. I don't think VHB talked about flow. I have had calls and emails back and forth and I scanned them briefly. I don't remember talking about flow. I saw rip-wrap and the rip-wrap shown on the approved wetlands plan is different from some other plan. I saw comments similar to that. We had elevation concerns. There are some concerns on the structure. I don't remember flow being an issue for Public Works. I think we were satisfied with that. Councilor Bandazian stated their suggestion is that it is overkill. Maybe making inferences about what Acting Chairman Newberry's thought process was, but is this overdesign is the question. Mr. Foote responded we are not saying it is underdesigned, we are not saying it is overdesigned. So the box culvert that is going over Boiling Kettle, no one is proposing, that I am aware of, to change the size of that. As a matter of fact, if you need to maintain that box culvert, if you think about it, it is 3 feet tall and with OSHA regulations now

you probably need to get in to maintain that with some sort of respiratory type equipment, so we are letting all that go about the height of the box culvert. Again, another maintenance issue with a box versus an open-bottom. The lower one is a 12-foot, and someone comes back with a 12-foot open on the top, we are all ears, but that hasn't been, to my knowledge, I haven't seen that since before the last Tuesday after the last Planning Board meeting. That was the first time, I believe, that I have seen it. Does that answer your question with flow? Acting Chairman Newberry stated it wasn't the flow that triggered my question. I just was basing my question on all of the conversation this evening.

Acting Chairman Newberry asked for further questions or comments from the Board. There were none.

Acting Chairman Newberry asked for comments or questions from the audience. There were none.

Ms. Hebert stated I can say this has been an outstanding issue and I am not sure more discussion will come to compromise, I am not sure there is a design that represents a compromise, which is why we are here tonight. Acting Chairman Newberry stated it just wasn't completely clear to me whether there were technical dimensions that were changeable. It sounds like there could be but that is really not what we need to accomplish tonight. Ms. Hebert stated I think it is the type of culvert and the sleeve or no sleeve on the other location.

**MOTION by Mr. Fairman that the Planning Board deny the request to replace the open-bottom box culvert with a closed-bottom box culvert on Boiling Kettle Way and deny the request to eliminate the steel sleeve at The Preserve subdivision as described in the application prepared by Bedford Design Consultants, dated October 15, 2018, per the recommendation of the Public Works Director. Mr. McMahon duly seconded the motion.**

Mr. Baskerville asked Mr. Chairman, since you haven't closed the public hearing, can I just ask for some findings for fact. We probably will continue this and appeal this, and we have been provided no technical information why our plans are incorrect. Mr. Fairman stated Mr. Chairman, there has been a motion and second and I don't think there should be discussion at this point. Acting Chairman Newberry responded I agree with Mr. Fairman.

**Acting Chairman Newberry called for a vote on the motion. With all Planning Board members voting in the affirmative, the motion carried, with Mr. Foote abstained.**

#### **V. Approval of Minutes of Previous Meetings:**

**MOTION by Councilor Bandazian to approve the minutes of the February 25, 2019 Planning Board meeting as submitted. Mr. Fairman duly seconded the motion. Vote taken – all in favor. Motion carried.**

## **VI. Communications to the Board:**

A. Ms. Hebert stated since our last meeting the Town has held their annual election and the voting results for the Zoning Amendments I wanted to review those with the Board.

- Planning Board proposed Zoning Amendments #1, #2 and #3 passed.
- Petitioned Zoning Amendments #4 and #5 passed.
- Petitioned Zoning Amendment #6 appears to have passed, but we are in the process of analyzing a protest petition. This amendment passed but it didn't pass by a 2/3 vote, so it would have needed 66 percent of the votes to pass because a protest petition was filed and we are in the process of reviewing whether or not the protest petition would be valid. It appears that it is not valid and the amendment will likely pass.
- Petitioned Zoning Amendment #7 failed.

Mr. McMahon stated there are people on the Board that have much more experience and time in Bedford than I have. Has there always been the normal procedure to have the Planning Board mark amendments or warrants or articles whether they are approved or not approved? Has there ever been a time when we just simply put it together and threw it to the voters without a recommendation? Ms. Hebert replied State law requires the Board support or not support petitioned zoning amendments. So, the amendments that were proposed by the Board are supported by the Board when you vote to put them on the warrant, but the petitioned amendments by State law requires you to review and vote to support or not support and then the amendment is annotated on the ballot.

Mr. Fairman stated this is the second year in a row that the Town voters disagreed with the Planning Board. Usually they went along with it in the past; the last two years they didn't, but we only had 20 percent of the people vote this time. Acting Chairman Newberry stated I would have liked to have seen more voter turnout. Ms. Hebert stated we had about 3,500 voters. Councilor Bandazian stated unfortunately what I have heard from most voters is that they were confused about what they were voting on with the zoning. Ms. McGinley stated I think sometimes on the petition amendments sometimes it is affirmative and sometimes it is negative depending upon what is presented. Ms. Hebert stated petitioned amendments are hard. They come into the Town and we can't change the language. I think that they can be challenging for voters because you have the full text of the amendment, whereas sometimes if we have a complicated Planning Board zoning amendment, we would have an abbreviated version on the ballot and we would have the full text available to the Planning office or the Town Clerk's office. Ms. McGinley stated one of the things that could be done by the applicant, if someone has a petitioned zoning change, they must have 25 voters in Bedford sign to be able to go forward. Would the staff be helpful in either describing a way that is normal to us or give advice as to the petition itself? Do you ever do that? Ms. Hebert replied we do, but, again, the full text of the amendment needs to be on the petition and then it transfers to the ballot. I think that is confusing. I know for some of these amendments there

is a lot of text, there is a lot of technical language, and to the average person that is probably not easily understood the first time they read through it if they are in the voting booth and they are reading through it quickly it can be confusing. Ms. McGinley stated with the Planning Board saying or yes or no, it is difficult. Mr. McMahon stated when a petition is screened and verified, only those who are Bedford citizens who are registered to vote will be counted. It is best to get a lot more than 25. Mr. Fairman stated of course there are advertisements and letters and signs for the petition. There is nothing put out there against the petition. None of us write letters because we can't or shouldn't. We don't put signs out, so in most cases unless it really gets controversial and then you get some other people interested, there is no advertising. Acting Chairman Newberry stated potential consequences aren't always clear. Mr. McMahon stated occasionally the Bedford Bulletin will publish letters to the editor encouraging people to vote either way. Mr. Fairman stated they will, but they are all for the petition. You have to find some people to write against it, other than us.

- B. Ms. Hebert stated the Master Plan Think Tank Committee met on March 14<sup>th</sup> and discussed the guiding principles for the document, sort of the broad vision statements. We had TPUDC join us in that meeting via a conference call and also got an update from TPUDC on their progress with the Master Plan. At this point we have a client draft that staff is in the process of reviewing. We hope to have a public draft out in about a month. They are working on formatting the document; they are working on making the document look pretty. The draft that we have is just text, so we hope to share a public draft with you in about a month, and once the public draft is available, the public process will kick up again with an open house and some public events to introduce the document to the community. Mr. Connors and I have been visiting with some community groups to talk about the Master Plan. We went to the Men's Club, the Lion's Club, and we will be visiting the Rotary on April 3<sup>rd</sup>. I think the next think tank meeting will likely be in May and the consultants have asked us to reach out to the community and request that anyone who may be amateur or professional photographers to share photographs of Bedford with Town staff. We are willing to give any photographer credit for photographs that are shared but we are looking for some images of Bedford that could be incorporated into the document.

Mr. Fairman asked is there a deadline for this document? What is the timeframe? Ms. Hebert replied we are pretty much on schedule. I think the timeframe for adoption would be December 2019. We expect to have a public draft in June and then we would be kicking up the public input again throughout the summer into the end of the year. This has been kind of a quiet time for the Master Plan. If you haven't heard a lot, it is because they have been doing their writing and crunching numbers and putting the document together.

Acting Chairman Newberry asked will the public draft incorporate some of the graphics and illustrations? Ms. Hebert replied yes. The public draft will incorporate the text and it will illustrate the full proposed layout for the document. It would have the info graphics and the photographs in the text. Acting Chairman Newberry stated I think the illustrations really add a significant dimension to it, as we have discussed in the past. Ms. Hebert stated we have looked at just a rough draft of their template for the document and it is looking really nice. Acting Chairman Newberry stated I am glad to hear that.

C. Ms. Hebert stated we have the first building at the Market & Main development, the Trader Joe's store is set to open on March 29<sup>th</sup>. I believe the REI building behind the Friendly Toast will be the next building that you will see go up. Acting Chairman Newberry stated I think we periodically see them here for changes to their design elevations. I think we saw them recently, so I would suspect that means that they are getting ready to move on those. Ms. Hebert responded I think they are getting ready to move. If they haven't locked in the cinema tenant, that has been that tenant that kind of locks in several other tenants, and I think we will see construction start quickly once that happens.

Mr. Foote asked have we heard any more on the offsite improvements? When they are going to begin that effort? Ms. Hebert replied I heard mid-April, and we are hoping to set up a preconstruction meeting and I know that is coming up fast.

## **VII. Reports of Committees: None**

## **VIII. Adjournment:**

**MOTION by Councilor Bandazian to adjourn at 8:10pm. Mr. Fairman duly seconded the motion. Vote taken – all in favor. Motion carried.**

Respectfully submitted by  
Valerie J. Emmons